U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted] Public Copy

B9

FILE: [redacted] Office: Vermont Service Center Date: NOV 27 2000
EAC 00 016 51011

IN RE: Petitioner: [redacted]
Beneficiary

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

[redacted]

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Portugal who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that he has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage. The director, therefore, denied the petition.

On appeal, counsel asserts that the denial was not based on statutory criteria, that the Service refused to adjudicate the petition based on gender-neutral principles, and that large portions of evidence were disregarded. Counsel submits additional evidence.

8 C.F.R. 204.2(c)(1) states, in pertinent part, that:

> (i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:
>
> > (A) Is the spouse of a citizen or lawful permanent resident of the United States;
> >
> > (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
> >
> > (C) Is residing in the United States;
> >
> > (D) Has resided in the United States with the citizen or lawful permanent resident spouse;
> >
> > (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject

[redacted]

> of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;
>
> (F) Is a person of good moral character;
>
> (G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and
>
> (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The petition, Form I-360, shows that the petitioner arrived in the United States on May 7, 1998. However, his current immigration status or how he entered the United States was not shown. The petitioner married his United States citizen spouse on September 1, 1998 at Houston, Texas. On October 18, 1999, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(E) requires the petitioner to establish that he has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. 204.2(c)(1)(vi) provides:

> [T]he phrase, "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's

child, and must have taken place during the self-petitioner's marriage to the abuser.

8 C.F.R. 204.2(c)(2) provides, in part:

> (i) Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.
>
> * * *
>
> (iv) Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his requests for additional evidence on November 4, 1999, and in his intent to deny on February 2, 2000. The discussion will not be repeated here. He stated, however, that being the victim of abuse and being the victim of a failed relationship are not the same thing. He further stated that "[b]eing hurt by the break-up of an amorous relationship does not equate to suffering abuse via extreme cruelty. The record did not establish that [redacted] decision to leave you for her former boyfriend demonstrated the intention to control you and exercise power over you, as claimed in the record." Because the record did not contain satisfactory evidence to establish that the petitioner has been battered by, or has been the subject of extreme cruelty perpetrated by his citizen spouse, the director denied the petition.

On appeal, counsel argues that the director's entire denial "refers solely to extreme cruelty, and is a testament to gender bias and disregard of the VAWA regulations at 8 CFR 204. It is important to note that nowhere is extreme cruelty defined in the regulations, nor is there anywhere in the regulations which mandate that intent of the abuser must be proven."

A review of the record failed to establish that the director exhibited "unfair discrimination against male VAWA applicants by holding them to a different and significantly greater standard than female applicants" as claimed by counsel. All applicants seeking special immigrant status under the battered spouse provisions of the Act must qualify on the same basis, as mandated by Congress. No discrimination or violation of equal protection, in this case, can be found.

As noted above, the qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." Further, a self-petitioner who has suffered no physical abuse is not precluded from a finding of eligibility for the benefit sought. Pursuant to 8 C.F.R. 204.2(c)(1)(vi), the phrase, "was battered by or was the subject of extreme cruelty," includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Furthermore, pursuant to 8 C.F.R. 204.2(c)(2), self-petitioners are encouraged to submit primary evidence whenever possible, the Service will consider any credible evidence relevant to the petition, and that the determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

Despite counsel's claim on appeal, the record reflects that the claim of qualifying abuse was evaluated by the director after a review of the evidence contained in the record of proceeding. He concluded that the record did not establish that the petitioner has been battered by or has been the subject of extreme cruelty perpetrated by his spouse.

Counsel, on appeal, submits another statement by the petitioner, similar to other statements previously furnished and addressed by the director. The petitioner, on appeal, reiterates his claim that he was threatened by his spouse's boyfriend when he told him, "I am a redneck, and you don't want to deal with a redneck." However, as indicated by the director, it could not be concluded that what may have been said, or the way in which words were communicated, qualified either as a threat, or subsequently, abuse. Further, the petitioner's claim that his spouse encouraged her lover to threaten him is not supported by the record. Nor is this one incident of a

claimed threat, "you don't want to deal with a redneck," sufficient to establish that the petitioner is the victim of any act or threatened act of violence as provided in 8 C.F.R. 204.2(c)(1)(vi). Additionally, there is no evidence in the record that the petitioner's spouse and her boyfriend are even pursuing or stalking the petitioner.

Counsel, on appeal asserts that the letter dated March 31, 2000 from [redacted] counselor at the Houston Area Women's Center (HAWC), was largely ignored by the director in his decision. He submits another letter, dated June 30, 2000, from [redacted]

The director, in his decision, noted that [redacted] in her letter of March 31, 2000, provided a synopsis and listed several reasons why the petitioner believes his experiences met the standard of suffering extreme cruelty. He noted that this letter was furnished based on his notice of intent to deny dated February 9, 2000, in which he found that [redacted] letter of December 21, 1999 was not sufficient evidence to establish that the petitioner's marriage included mental/emotional abuse, that this letter is the petitioner's own account of his marriage, and that [redacted] did not provide her own observations or professional opinions regarding the existence of extreme mental cruelty.

[redacted] stated in her letter of March 31, 2000, that based on her training, experience, and observations of the petitioner, she thinks that he is experiencing common effects of domestic violence; his descriptions of his wife's treatment are common indicators of emotional abuse; his feelings of fear and sadness, which resulted from the abuse, are consistent with domestic violence survivors with whom she has worked; the trauma that a victim suffers can have a tremendous impact on his or her life; and it is not uncommon for immigrant domestic violence victims to be threatened by their abusers regarding their immigration status.

In her letter of June 30, 2000 [redacted] quotes excerpts from her letter of March 31, 2000 and states:

> [redacted] account of his marriage and of his wife's behavior and her intentional repeated acts are consistent with emotional abuse. In my experience with cases like [redacted] the abusive spouse acts with the intent to control and exercise power over the other spouse. [redacted] expressed his fear of his wife's power while we [sic] were together. [redacted] believed that [redacted] destruction of his trust, her withholding her thoughts and sex from him, and her becoming pregnant by her ex-lover were attempts to control him and exercise power over him.

[redacted]

Again, this letter failed to establish that the counselor's conclusion is based on anything other than statements made by the petitioner. Further, while the petitioner claims that he has been emotionally abused by his spouse, it is noted that not until more than two months after filing the self-petition did the petitioner seek an evaluation and/or counseling from HAWC on December 20, 1999 and again on March 23, 2000.

Marital tensions, infidelity, and incompatibilities which serve to place severe strains on a marriage, and in fact may be the root of a marriage's disintegration, do not, by themselves, constitute the extreme cruelty which was contemplated by Congress in enacting the Violence Against Women Act. The evidence provided in the present case does not suggest that the marital difficulties claimed by the petitioner were beyond those encountered in many marriages. Further, while it is claimed that such actions of the petitioner's spouse was the intent to control and exercise power over the petitioner, the record contains no evidence that the marital difficulties were compounded by any effort on the part of the citizen spouse to control and exercise power over the petitioner by becoming pregnant by her ex-boyfriend, and also with threats regarding his immigration status. Rather, the record indicates that the citizen spouse merely abandoned the marital relationship and returned to her prior boyfriend. "Abandonment" is not included in, nor does it meet, the definition of qualifying abuse as provided in 8 C.F.R. 204.2(c)(1)(vi).

As provided in 8 C.F.R. 204.2(c)(1)(vi), the qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." The record contains insufficient evidence to establish that the claimed abuse perpetrated toward the petitioner by his spouse was "extreme." The petitioner has failed to establish that he was battered by or was the subject of "extreme cruelty" as contemplated by Congress, and to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.